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No. 73-1921

In the

Supreme Court of the United States

OCTOBER TERM, 1973

WELLCO CHEMICAL PRODUCTS COMPANY,
An Illinois Corporation,

Petitioner,

vs.

CASCADE CHEMICAL COATINGS, INC.,
An Oregon Corporation,

Respondent.

Petition for Writ of Certiorari To The Appellate Court of Illinois, First Judicial District.

PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, FIRST JUDICIAL DISTRICT

ROBERT A. ROMANOFF
100 N. LaSalle Street
Chicago, Illinois
Counsel for Petitioner

PETER N. APOSTAL
Of Counsel

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PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, FIRST JUDICIAL DISTRICT

To the Honorable Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Petitioner respectfully prays that a Writ of Certiorari issue to review the judgment and opinion of the Supreme Court of Illinois denying the Petition for Leave to Appeal entered on March 28, 1974; Petitioner further prays that

this Court review the judgment and opinion of the Appellate Court of Illinois, First Judicial District, entered on December 4, 1973.

OPINIONS BELOW

The opinions of the Supreme Court of Illinois have not been reported as yet. The opinion of the Appellate Court of Illinois is reported in 305 N.E. 2nd 595; 15 Ill. App. 3rd 1056.

JURISDICTION

The date of the opinion of the Supreme Court of Illinois is March 28, 1974. This Petition is filed within 90 days from said date. Jurisdiction of this Court is invoked under 28 U.S.C. § 1254 (1).

QUESTIONS PRESENTED

1.) The Full Faith and Credit Clause of the United States Constitution does not prevent an inquiry into the jurisdiction of the Court by which a Judgment offered into evidence was rendered.

2.) The Filing of a Special Appearance does not prevent Collateral Attack of a foreign Judgment where it appears from the Record that the Court rendering said Judgment had no jurisdiction over a Non-Resident Corporation.

3.) Motion for Summary Judgment to Domesticate a foreign Judgment cannot be granted where the pleadings and supporting Affidavits create genuine issues of material fact relative to a foreign Court's jurisdiction to enter Judgment against a Non-Resident Corporate Defendant.

STATUTORY PROVISIONS INVOLVED

Ill. Rev. Stat. (1971), Ch. 110, § 57(3).

Section 1 of Article IV of the Constitution of the United States.

Section 1 of the 14th Amendment to the Constitution of the United States.

Art. 1, § 2 of the Constitution of the State of Illinois

(See Appendix C)

STATEMENT OF FACTS

On August 3, 1971, Respondent, Cascade Chemical Coatings, Inc., an Oregon Corporation obtained a default judgment against the Petitioner, Welleo Chemical Products Company, an Illinois Corporation, in the Circuit Court of Multnomah County, State of Oregon. Prior to the entry of the default judgment by the Oregon Court the Petitioner had filed a Special and Limited Appearance for the sole purpose of contesting the jurisdiction of the Oregon Court over its person and moved the Court to quash serevice of summons on the grounds that Petitioner was a resident of Illinois and did not transact business in the State of Oregon.

On June 4, 1971, the Oregon Court denied Petitioner's Motion to Quash since Petitioner did not present any evidence in support of said Motion. The record indicates that no evidence was submitted by either Respondent or Petitioner as to the question of the Court's jurisdiction over the Petitioner and the Order merely recited that Petitioner was given ten (10) days leave to further plead.

Thereafter on August 2, 1971, the Circuit Court entered a default judgment in favor of the Respondent and against

the Petitioner in the amount of $21,398.78, plus costs of $29.40. The judgment order indicates that the Oregon Court did not pass on the questions raised in Petitioner's Motion to Quash; to wit, lack of jurisdiction over Petitioner as an out-of-state resident and its lack of transacting business in the State of Oregon. The Court merely stated that Petitioner "was duly served with Summons and Complaint in Cook Court, State of Illinois," and presumed that it had jurisdiction over the person and the subject matter to enter a default judgment in said cause.

The Respondent then filed its Petition to Register the Foreign Judgment in the Circuit Court of Cook County, State of Illinois. Petitioner then filed its Appearance and Jury Demand and thereafter an Answer to the Petition to Register Foreign Judgment, in which it denied the allegations in the Petition and set up two affirmative defenses, to-wit;

1.) That the Judgment entered August 2, 1971, in Oregon was Null and Void since the Oregon Court had never acquired jurisdiction of Welleo Chemical Company as required by Statute.

2.) Welleo Chemical Company maintained no sales offices or salesmen in the State of Oregon, maintained no offices for the transaction of business in the State of Oregon, and that all production and other substantial activities concerning this transaction took place in the State of Illinois, and that there are no minimum contacts with the State of Oregon nor was there the transaction of any business within the State of Oregon which would give the Circuit Court of Multnomah County jurisdiction of the subject matter, or of the parties.

Even though these pleadings had created genuine issues of material fact as to the jurisdiction of the Oregon Court to enter the Default Judgment against the Petitioner, the Respondent later filed a Motion for Summary Judgment on the grounds that the issue of Jurisdiction had already been decided by the Oregon Court, and, therefore, the Illinois Courts were required to give full faith and credit to the Oregon Judgment.

The Petitioner then filed his Answer to the Motion for Summary Judgment with the supporting Affidavit of Glenn Wellman, President of Welleo Chemical Company. In its answer Petitioner re-asserts the two affirmative defenses set out in its original answer in addition to two additional defenses; to-wit;

1.) That the Circuit Court of the State of Oregon under its own Statute, ORS 14035, could not obtain jurisdiction over an out-of-state person (or corporation) unless the cause of action arose out of:

a.) the transaction of any business in Oregon.

b.) the commission of a tortious act within the State.

c.) the ownership, use or possession of any real property in Oregon.

d.) contracting to insure any person, property or risk located within this State.

The attached Affidavit of Glenn Wellman, President of the Petitioner Company, which stands uncontroverted, denied unequivocally that the Petitioner committed any one of the acts necessary to confer jurisdiction upon the Oregon Courts.

2.) That the Oregon Court had never adjudicated the question of jurisdiction over the Petitioner. From the record it appears that no evidence or testimony was ever introduced either in favor or against defendant's motion to quash, summons and no full and complete hearing was ever conducted by the Oregon Court on the issue of jurisdiction.

The Petitioner then cited a series of cases holding for the proposition that a state may inquiry into the "jurisdiction of the Court by which a judgment offered in evidence was rendered." Furthermore, that since the Respondent did not dispute the factual matters brought up in Petitioner's supporting affidavit, issues of fact were created thereby precluding Summary Judgment.

In Respondent's reply memorandum it was contended that the issue of jurisdiction was fully and fairly litigated since Petitioner filed his Special Appearance and moved the Court to quash summons. The Respondent further contended the mere opportunity to present evidence was all that was required under Full Faith and Credit Clause, and the fact that no evidence or testimony was ever taken at the time of the hearing, was of no significance, and that the decision of the Oregon Court (without a full and complete hearing) that jurisdiction existed was res judicata and not subject to collateral attack.

In Petitioner's Supplemental Memorandum an attempt was made to persuade the Court that it had the underlying power to inquire into the jurisdiction of the Oregon Court in rendering the default judgment. The following arguments were made:

1.) That the Full Faith and Credit Clause does not prevent an inquiry into the jurisdiction of the Court by which a judgment offered in evidence was rendered.

2.) Under the Restatement of Conflict of Laws, § 105, collateral attack on a judgment of a sister state will lie in some situations where Petitioner has received adequate notice and was accorded an opportunity to be heard.

3.) That the decision of the Oregon Court on the issue of jurisdiction would be entitled to full faith and credit if the issue had been "fully and fairly litigated and finally decided" in the Oregon Court. But since the issue of jurisdiction was never litigated at all, Petitioner could collaterally attack the foreign judgment in Illinois.

4.) That by virtue of the Affidavits filed by Glenn Wellman, which must be taken as true since they were not contraverted, the Oregon Court could not have taken jurisdiction of the person of the Petitioner, since by its own Statute, ORS 14035, said Court was deprived of so doing. Therefore, the Oregon Judgment was subject to collateral attack.

The Trial Court rejected Petitioner's argument and held that the issue of jurisdiction had been adjudicated by the Oregon Court and that said adjudication *must* be given full faith and credit and, therefore, binding upon said Court. The Court then proceeded to grant Respondent's Motion for Summary Judgment and held that the judgment of the Circuit Court of the State of Oregon for the County of Multnomah, entered on August 2, 1971, in favor of Respondent and against Petitioner in the amount of $21,398.78, plus costs, be made a final judgment of the Trial Court. Said Order was entered on June 22, 1972, from which appeal was taken.

On Appeal, the Appellate Court of Illinois, First District held that the jurisdictional issue was raised in Oregon and Petitioner was given an opportunity to fully litigate the issue before the Oregon Court, and that even

though the record did not show that Petitioner had transacted business in Oregon, the jurisdictional issue was adjudicated and, therefore, was res judicata and proceeded to affirm the trial court's decision granting Summary Judgment to Respondent.

On March 28, 1974, the Supreme Court of Illinois denied Wellco's Petition For Leave to Appeal.

REASONS FOR GRANTING THE WRIT

(a). It is thoroughly settled law that the Constitutional provision that full faith and credit shall be given in each state to the judicial proceedings of other states does not preclude inquiry into the jurisdiction of the Court in which judgment is rendered over the subject matter, or the parties affected by it, or into facts necessary to give such jurisdiction. *Thompson* v. *Whitman,* 85 U.S. 457, 18 Wall 57, 21 L. Ed. 897 (1873); *Simmons* v. *Saul,* 139 U.S. 439 (1891); *Field* v. *Field,* 215 Ill. 496 (1905); *Forsyth* v. *Barnes,* 228 Ill. 326 (1907).

Thus, an Illinois Court may always inquire into the underlying jurisdiction of the Court rendering the foreign judgment once that issue is brought up in the pleadings or evidence in the Illinois proceeding. Furthermore, the Illinois Supreme Court has stated:

> "that the *Record of a judgment* rendered in another State may be contradicted *as to the facts necessary to give the Court jurisdiction,* and if it be shown that such facts did not exist the *record* will be a *nullity,* notwithstanding it may recite that they did exist; that want of jurisdiction may be shown either as to the subject matter or the person" (Emphasis added) *Pembleton* v. *The Illinois Commercial Men's Association,* 124, N.E. 355, 289 Ill. 99, 103. (1919)

In the *Pembleton Case,* the trial Court in Illinois heard evidence on the issue of jurisdiction of the Nebraska Court to enter judgment against an Illinois corporation, and decided to give full faith and credit to the Nebraska judgment. The Illinois Supreme Court reversed the decision since it appeared from the record that the Nebraska Court had NO jurisdiction in fact over the Illinois corporations, since the record failed to show Defendant had transacted business in Nebraska. Since the evidence

introduced in the Illinois trial contradicted the Nebraska Court's jurisdiction (as cited in the Nebraska judgment) over the Illinois Defendant, the Nebraska judgment was a nullity.

In the case at bar, as in the Pembleton case, Defendant an Illinois Corporation, set up in its Answer two affirmative defenses to the Oregon Judgment, to wit;

In the case at bar, as in the Pembleton case, Defendant an Illinois Corporation, set up in its Answer two affirmative defenses to the Oregon Judgment, to wit;

1.) That the Oregon judgment was void since the Oregon Court never acquired jurisdiction over Defendant pursuant to Oregon Statute.

2.) That Defendant never transacted any business in the State of Oregon, maintained no salesmen or sales offices, that all production and other substantial activities took place in Illinois; and that no minimum contacts existed with the State of Oregon to submit the Defendant to the Jurisdiction of the Oregon Court.

Furthermore, the allegations as to non-residency were substantiated by the Affidavit of Glenn Wellman, President of Defendant Corporation and never controverted by Respondent. It is quite clear from the record that Petitioner raised substantial questions as to "facts necessary to give the (Oregon) Court jurisdiction", thereby justifying a hearing on the merits by the trier of facts which was denied by the trial court.

(b). In emphasizing the importance of the record and its findings of jurisdiction by the Foreign Court, the Illinois Appellate Court in *Sartain* v. *Avery Company,* 217 Ill. App. 286, (1920) held that the filing of a Special Appearance does not preclude collateral attack of a foreign

judgment where the record of the Court rendering the judgment makes no reference to the adjudication of the issue of transaction of business. In *Sartain* the Illinois Appellate Court dealt with basically the same factual situation as in the case at bar. In this case the Appellate Court affirmed the Illinois Trial Court's decision not to give Full Faith and Credit to an Oklahoma judgment against the Defendant, an Illinois Corporation. From the record it appeared that Defendant, an Illinois Corporation, had filed a Special Appearance in the Oklahoma proceeding contesting the jurisdiction of the Oklahoma Court over the Defendant on the grounds of improper service and the lack of transaction of business in Oklahoma. A Default Judgment was entered against Defendant, even though no action was ever taken on Defendant's special plea. The Oklahoma Plaintiff contended, as does the Plaintiff here, that the entry of a Special Appearance as to the jurisdiction was a fact or question which was directly in issue in the Oklahoma suit and, therefore, conclusively settled and could not be litigated again between the parties.

In affirming the Trial Court's decision in favor of the Illinois Defendant, the Appellate Court inspected the terms of the Oklahoma judgment, and found that said *Judgment did not adjudicate the existence of the Court's jurisdiction over the Defendant by virtue of its transaction of business in Oklahoma.* The Court stated further:

> "The (Oklahoma) Court does not by its recital find adversely to (Defendant). It ignores the service of process . . . and does not find that (Defendant) was doing business in Oklahoma. It does not find that (Defendant) plea was a general appearance and that by reason thereof the Court had jurisdiction but does

> find, 'that said service of Summons upon the Secretary of State of Oklahoma is regular and that by *such service* this Court has jurisdiction over the parties to this action and the subject matter hereof'. The plea alleged that (Defendant) was not and never had been doing business in Oklahoma and this allegation was not met by anything contained in the replication. This allegation was a material allegation. . .' It has been repeatedly held that in order to make such a statute applicable to a foreign corporation in any state, *it must be shown that such corporation was doing business in that state'.*" (Emphasis Added) (Ibid)

The Appellate Court below held that the case at bar is "not analogous" to the *Sartain* situation, even though the facts were almost identical. (Page 3 of "Exhibit A"). Although the Appellate Court concedes that the record in Oregon makes no finding as to the transaction of business, the Court proceeds to entertain hypothetical assumptions as to what the Oregon Court believed were the burdens that had to be overcome by the Defendant. Instead of dealing with the facts as stated in the record, the Appellate Court proceeded with its hypothetical argument and posed the questionable conclusion:

> "Even if one assumes that the Court's assumption as to the incidence of the initial burden of procedure on the Motion to Quash was error, Defendant had committed itself to Oregon jurisdiction, and its only remedy was to appeal. Moreover, the statutory presumption of jurisdiction continued to exist." (Page 4 of Exhibit A).

This conclusion completely contradicts the holdings of *Pembleton and Sartain* for it stands for the proposition that Illinois Courts' *must* accept a foreign Court's decision as to its jurisdiction. The Appellate Court, herein, has

completely disregarded the Defendant's unrefuted allegations as to the lack of transaction of business in Oregon and denied him his day in Court. Such a precedent would greatly undermine the inherent power of Illinois Court's to inquire into the jurisdictional basis of a foreign judgment before granting it Full Faith and Credit in Illinois. This is particularly significant where the foreign judgment contravenes Illinois Public Policy or where the method in which the judgment was obtained was jurisdictionally improper. Finally, the affirmative jurisdictional requirement to wit, the transaction of business in Oregon by the Defendant, *was never established in the record.* Defendant's failure to introduce evidence to the contrary does not cure or excuse the establishment of this fact in the record. The non-existence of this jurisdictional fact in the record makes the Oregon Judgment voidable on its face and subject to collateral attack in Illinois. The Trial Court, herein, was therefore obliged to hold a full and complete hearing before the trier of fact in order to resolve this issue and not to have disposed of it by granting Respondent's Motion for Summary Judgment. By affirming the Trial Court's Decision, the Appellate Court has denied the Petitioner its day in Court and simultaneously saddled it with a judgment for $21,398.78, in violation of his right to procedural due process as guaranteed by the Illinois and United States Constitutions.

c). The Appellate Court erred in affirming the trial Court's Order granting the Respondent's Motion for Summary Judgment since the answers and supporting affidavits (and other pleadings) filed on behalf of the Petitioner created a genuine issue of material fact. The record from the Oregon Judgment clearly indicates that the basic jurisdictional fact, to wit, the transaction of business in

Oregon by the Petitioner was never adjudicated in the Oregon Court. At the time of the Oregon hearing on Petitioner's Motion to Quash Summons, the record indicates that *no* evidence was submitted by either Respondent or Petitioner as to Petitioner's transaction of business in Oregon, but rather the Order of the Oregon Court merely recites that the Motion to Quash was denied and Petitioner was given 10 days to further plead (which he did not do since this would have constituted a general appearance and by virtue thereof subjected the Petitioner to Oregon Court's jurisdiction). Subsequently, the Oregon Court entered the Default Judgment against the Petitioner, and in the Judgment Order the Oregon Court again made no finding that Petitioner had transacted business in Oregon which under the provisions of the Oregon Long Arm Statute (ORS 14035) was necessary in order to confer jurisdiction over a non-resident defendant.

Contrastingly, in Petitioner's Answer to the Respondent's Petition to register Foreign Judgment, and again in its Answer to the Motion for Summary Judgment and its Supporting Affidavit, it was clearly stated that Petitioner had never transacted business in Oregon, therefore raising the factual issue of the validity of the Oregon Court's jurisdiction over the Petitioner in entering its Judgment. The creation of this genuine factual issue as to the transaction of business necessitated that this issue be decided by the trier of fact, to wit, the Jury, since a Jury Demand had been filed by the Petitioner. It is not the function of the Trial Court to weigh conflicting issues of fact on Motions for Summary Judgment but rather to determine if there is an issue of fact to be decided by a Jury or the trier of fact. *Glen View Club* v. *Becker,* 113 Ill. App. 2d 127, N.E. 2d 778 (1969). The purpose of

Summary Judgment procedure is to determine whether any issue of material fact actually exists and if there is such an issue, Summary Judgment must be denied. *LaSalle Nat., Inc.,* v. *Executive Auto Leasing Co.,* 257 N.E. 2d 508 (1970); also *Ill. Rev. Stat.* (1971) Ch. 110, 57 (e). Furthermore, before deciding the Motion for Summary Judgment the Court *must* consider the entire record. *Miller* v. *Owens Illinois Glass Co.,* 48 Ill. App. 2d 412, 199 N.E. 2d 300 (1964).

The Trial Court and the subsequent decision of the Appellate Court erred in not permitting a full hearing on the issue before the jury and by granting the Respondent's Motion for Summary Judgment denied the Petitioner his right to procedural due process as guaranteed by the United States and Illinois Constitutions.

CONCLUSION

Wherefore, Wellco Chemical Products Company, Petitioner, prays that a Writ of Certiorari issue to review the decision of the Supreme Court of Illinois and the Judgment and opinion of the Supreme Court of Illinois and the Judgment and opinion of the Appellate Court of Illinois, First Judicial District in the above entitled case.

Respectfully submitted,

ROBERT A. ROMANOFF
100 N. LaSalle Street
Chicago, Illinois 60602
Counsel for Petitioner

PETER N. APOSTAL
Of Counsel

APPENDIX A

CASCADE CHEMICAL COATINGS, INC.,
An Oregon Corporation,
Plaintiff-Appellee,
vs.
WELLCO CHEMICAL PRODUCTS CO.,
An Illinois Corporation,
Defendant-Appellant.

Appeal from the Circuit Court of Cook County.
Honorable Benjamin Schwartz, Presiding.

MR. PRESIDING JUSTICE STAMOS delivered the opinion of the court.

Defendant appeals from a summary judgment entered in favor of plaintiff in an action to enforce a foreign judgment. The issue presented for our decision is whether the filing of a special appearance in a foreign court prevents collateral attack of the jurisdictional basis of a judgment entered therein where it appears that the jurisdictional issue was decided by the foreign court.

The facts of this case are undisputed. Plaintiff initiated an action against defendant in the Circuit Court of Multnomah County in the State of Oregon. Defendant was served with summons and a copy of the complaint in Cook County in the State of Illinois. Defendant filed a special appearance in the Oregon court "for the sole purpose of questioning the jurisdiction of the court over its person" and made a motion to quash the return of service of summons. A hearing on defendant's motion was held at which defendant was represented by counsel. Defendant presented no evidence in support of its motion at the hearing. The Oregon court thereafter denied the motion to quash the return of service and granted defendant 10 days in which to plead in response to plaintiff's

complaint. Defendant did not further plead and a default judgment was entered against it.

Thereafter plaintiff filed a petition in the Circuit Court of Cook County to register the Oregon judgment. Defendant filed an answer denying that the Oregon court had jurisdiction to enter judgment against it. Plaintiff filed a motion for summary judgment on the ground that the issue of jurisdiction had been decided by the Oregon court and, therefore, that decision was entitled to full faith and credit. The Circuit Court of Cook County granted plaintiff's motion and entered judgment for plaintiff based upon the Oregon judgment.

Defendant contends that its filing of a special appearance in the Oregon court does not prevent it from collaterally attacking the judgment entered therein.

When a court of one state is requested to give effect to the judgment of a sister state it may constitutionally inquire into the foreign court's jurisdiction to render that judgment, but, when that inquiry discloses that the issue of jurisdiction has been litigated and decided in the court which rendered the judgment, the matter is *res judicata* and the court wherein enforcement is sought must extend full faith and credit to the judgment. *Durfee* v. *Duke*, 375 U.S. 106; *Baldwin* v. *Iowa State Travelling Men's Assn.*, 283 U.C. 522; *Wayside Transp. Co.* v. *Marcell's Motor Express, Inc.*, 284 F2d 868; *Serpell-Winner-Jordan, Inc.* v. *Crete Mills*, 51 F2d 1028.

Defendant concedes that its special appearance in the Oregon court placed the question of that court's jurisdiction in issue. Defendant also concedes that if the Oregon court ruled on the question of jurisdiction, defendant could not collaterally attack that determination. Defendant maintains, however, that no evidence was presented on its motion to quash service of summons, and that the Oregon court denied the motion without making an explicit finding that defendant transacted business in the State of Oregon. Defendant further contends that the default

judgment order does not reflect an affirmative finding by the Oregon court that defendant transacted business in Oregon, and was therefore subject to the *in personam* jurisdiction of the Oregon court.

Initially, we recognized the well-established principle that, as evidence of a foreign judgment, the transcript of record covering that judgment must show affirmative jurisdictional facts. *Frick-Reid Supply Co.* v. *Consolidated Adjustment Co.*, 197 Ill.App. 303.

Defendant places great reliance on *Sartain* v. *Avery*, 217 Ill. App. 286, for the proposition that the judgment order itself must explicitly state that the requirements subjecting a foreign corporation to jurisdiction have been established. We do not agree with this limited interpretation.

Sartain involved an Oklahoma judgment which plaintiff attempted to enforce in Illinois. Defendant filed a plea in the Illinois proceedings stating that defendant had not business in the State of Oklahoma, and was not subject to its jurisdiction. Plaintiff's replication was based on the record of proceedings in Oklahoma which included the service of process upon an alleged agent of defendant, defendant's special appearance in Oklahoma, and the judgment order of the Oklahoma court. The record indicated that the Oklahoma court took no action on defendant's special appearance, and three days later entered a default judgment against defendant. The court in *Sartain* held that defendant's plea was not met by "anything" in plaintiff's replication showing that the Oklahoma court had found that defendant transacted business in Oklahoma; consequently, the Oklahoma judgment was not entitled to full faith and credit.

The case at bar is not analogous to the *Sartain* situation. Counsel for defendant has conceded that plaintiff's complaint filed in the Oregon proceedings alleged that defendant transacted business in Oregon. In the absence of a showing to the contrary, there arose a presumption

of jurisdiction of both the person and the subject matter.[1] *See Jacobson* v. *National Dairy Products Corp.*, 31 Ill. App.2d 457, 176 N.E.2d 549. The *in personam* jurisdiction over defendant became a disputed issue when defendant filed its special appearance and motion to quash service (based solely on defendant's contention that it did not transact business in Oregon).[2] The Oregon court set a date for a hearing on the issue raised by defendant's motion, and, although no evidence was presented at that hearing, counsel for both plaintiff and defendant were present. The Oregon court then decided the issue of jurisdiction adversely to defendant by denying its motion to quash service of summons. It is true, as defendant points out, that the order denying the motion to quash made no finding that defendant transacted business in the State of Oregon. The reason is clear from the wording of the order: The motion was denied not on a substantive basis, but on a procedural basis. It was, in effect, a default denial. The court assumed that defendant had at least the initial burden of procedure on its own motion to quash; for failure to sustain that burden, the motion was denied. Even if one assumes that the court's assumption as to the incidence of the initial burden of procedure on the motion to quash was error, defendant had committed itself to Oregon jurisdiction, and its only remedy was to appeal.[3]

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[1] Ore. Rev. Stat. 1971, ch. 15, par. 15.030: From time of the service of summons, or the allowance of a provisional remedy, the court shall be deemed to have acquired jurisdiction, and to have control of all subsequent proceedings. • • •

[2] Ore. Rev. Stat. 1971, ch. 16, par. 16.150 states: If a motion or other form of application on special appearance is interposed and denied, the objection shall not be waived by the subsequent entering of a general appearance; and the court's ruling thereon should be subject to review on appeal from the final judgment, decree or other determinative appealable order in the cause or matter.

[3] There is some indication that, under Oregon law, it was not error. See Oregon Civil Pleading and Practice, Secs. 15.5, 22.12, and 2.15.

Moreover, the statutory presumption of jurisdiction continued to exist.[4]

Thus, the record before us indicates that defendant raised the jurisdictional issue in Oregon, and, unlike the situation in *Sartain*, defendant was given an opportunity to fully litigate that issue before the matter was decided by the Oregon court; his special appearance was not simply ignored. Therefore, the jurisdictional issue is *res judicata*.

The judgment of the Circuit Court of Cook County, extending full faith and credit to the Oregon judgment, is affirmed.

JUDGMENT AFFIRMED.

LEIGHTON and HAYES, JJ., *concur*.

[4] See statute cited in footnote 1.

APPENDIX B

UNITED STATES OF AMERICA

STATE OF ILLINOIS)
) ss.
SUPREME COURT)

At a Term of the Supreme Court, begun and held in Springfield, on Monday, the eleventh day of March in the year of our Lord, one thousand nine hundred and seventy-four, within and for the State of Illinois.

Present: Robert C. Underwood, Chief Justice
Justice Walter V. Schaefer
Justice Daniel P. Ward
Justice Joseph H. Goldenhersh
Justice Thomas E. Kluczynski
Justice Charles H. Davis
Justice Howard C. Ryan

William J. Scott, Attorney General
William G. Lyons, Marshal
Attest: Justin Taft, Clerk

Be It Remembered, that, to-wit: on the 28th day of March 1974, the same being one of the days of the term of Court aforesaid, the following proceedings were, by said court, had and entered of record, to-wit:

No. 46470 CASCADE CHEMICAL COATINGS, INC., An Oregon Corporation, *Respondent* vs. WELLCO CHEMICAL PRODUCTS CO., An Illinois Corporation, *Petitioner*	Petition for Leave to Appeal from Appellate Court First District 57995

And now on this day the Court having duly considered the Petition for Leave to Appeal herein and being now fully advised of and concerning the premises, doth overrule the prayer of the petition and denies Leave to Appeal herein.

And it is further considered by the Court that the said Respondent recover of and from the said Petitioner costs by it in this behalf expended, to be taxed, and that it have execution therefor.

I, Justin Taft, Clerk of the Supreme Court of the State of Illinois and keeper of the records, files and Seal thereof, do hereby certify that the foregoing is a true copy of the final order of the said Supreme Court in the above entitled cause of record in my office.

In Witness Whereof, I have hereunto subscribed my name and affixed the Seal of said court this 22nd day of April, 1974.

Clerk,
Supreme Court of the State of Illinois.

APPENDIX C

(Civil Practice Act)

Ill. Rev. Stat., 1971, Chapter 110, § 57(3)

"Procedure . . . The Judgment or decree sought shall be rendered forthwith if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment or decree as a matter of law. . ."

Art. IV of the Constitution of the United States

Full Faith and Credit shall be given in each state to the Public Acts, Records and Judicial proceedings of every other State. . .

Art. 1, § 2 of the Constitution of the State of Illinois (1971)

No person shall be deprived of life, liberty or property without due process of law. . .

14th Amendment to the Constitution of the United States, Section 1

. . . No State shall make or enforce any law which shall abridge the privileges and or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property without due process of law; . . .